UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

NEXTDOOR.COM, INC., Plaintiff, v. RAJ ABHYANKER, Defendant.	No. C 12-5667 EMC San Francisco, California Thursday, June 6, 2013 (36 pages)

TRANSCRIPT OF PROCEEDINGS

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Thursday, June 6, 2013

(2:05 p.m.)

(In open court)

DEPUTY CLERK: Calling C 12-5667, Nextdoor.com vs. Abhyanker.

Counsel, please come to the podium and state your name for the record.

MR. PULGRAM: Laurence Pulgram of Fenwick & West, appearing for the plaintiff and counter-defendant, Nextdoor.com; and for counter-defendant Prakesh Janakiraman.

THE COURT: Great. Thank you, Mr. Pulgram.

MR. WALIA: Harpreet Walia, Royse Law Firm, for counter-defendants Monsoon Company and Sandeep Sood.

THE COURT: Thank you.

MR. TARABICHI: Bruno Tarabichi appearing on behalf of defendant and counterclaimant Raj Abhyanker.

THE COURT: Thank you.

MR. MONTGOMERY: Good afternoon, your Honor, Roy Montgomery from LegalForce RAPC appearing for the defendant and counter claimant, Raj Abhyanker.

THE COURT: Good afternoon.

I think the first question that logically should be addressed is the adequacy of the allegations of -- in terms of identification of trade secrets. And obviously it's always sort of a paradox in these cases to have enough of a

specification to fulfill the requirements of pleading and notice and everything else and yet not of course suffer under too much weight at the same time. My view is that, at least for purposes of pleading, I think there's been sufficient degree of specificity here in terms of at least identifying framework, ballpark, subject matter, the gist of the trade secret allegation.

I will say, however, that with respect to allegations about wrongful acquisition, disclosure and use, there seem to be specific allegations -- and I will say, by the way, that information and belief is acceptable where the information is not presumptively in the knowledge of the pleading party, and I think that is somewhat the case here. The problem is, there's -- other than reference to certain subsets such as the use of the Nextdoor.com name in connection with neighborhood-based social networking, neighborhood-level privacy controls, and bidding history of the domain, and perhaps using the specification prototype -- test prototype.

The other allegations are -- seem rather conclusory and light, and my inclination in that regard is to the extent that they're not sufficiently specific, I think dismissal with leave to amend is appropriate. I think there ought to be greater specificity in terms of the actual allegations of wrongful acquisition, because there's a whole list of stuff that are alleged to be trade secrets but it's not so clear

which one of those, specifically, are really at issue here.

MR. PULGRAM: Your Honor, we agree that what's lacking in the grittiest part is the wrongful acquisition and use. There is an allegation here that the name was wrongfully acquired, and that's the only thing that was really alleged here to be wrongfully acquired and to have been used.

We believe that it's appropriate, at this junction, to dismiss that allegation with prejudice based on the patent, and if it's permissible, I'd like to walk through just a couple of slides of this patent to show how the name was disclosed and shouldn't be in this case at all, because it was very clearly -- this is from a Request for Judicial Notice, Exhibit No. 1.

Actually, I have the wrong folder.

MR. TARABICHI: May I say something quickly about that?

THE COURT: Yes.

MR. TARABICHI: My understanding is we're dealing with a motion to dismiss the counterclaim for trade secret misappropriation rather than to strike a portion of it, and I think if we have alleged misappropriation of trade secrets and, you know, they're trying to knock out basically the name "Nextdoor" for the trade secret, we still have other trade secrets that we've identified in Paragraph 109, and in the counterclaim, that suffice to support the claim such that you

can't say that we failed to state a claim for trade secret misappropriation.

So, I don't know that, you know, it doesn't dispose of the entire cause of action, if that's appropriate.

MR. PULGRAM: Well, I think it will dispose of the entire cause of action, but that regardless, it's clear under the case law that we're -- a substantial component of the cause is dispositively precluded as a matter of law and judicial notice that should be dismissed, and that allegation with respect to the name Nextdoor.com should be....

This is -- you actually have the correct document, Counsel.

THE COURT: So we were talking about the use of the name at this point.

MR. PULGRAM: Yes, your Honor. This is the patent, and Figure 1 of the patent shows in blue the overall global neighborhood environment. Within the global neighborhood environment, there is a yellow commerce module. And into that commerce module, advertisers pour ads. That's what Figure 1 shows.

If we turn to Figure 5, the next slide, this is the commerce module blown up. And it shows the business display advertisement module Number 502 within the commerce module. So what we have is, within the overall environment, a commerce module and ad display module within it.

On the next slide -- all the highlighting in here is mine, your Honor -- Paragraph 73, it describes, a commerce module may provide an advertisement system to a business that may enable the users to purchase locations in the neighborhood. This is describing how an advertiser buys a spot in the commerce module.

When we turn to the next page, Page 21, Paragraph 236, it directly describes Nextdoor.com as the name of the network. It says advertisers can own their listings by placing a display ad on Nextdoor.com. This reflects that Nextdoor.com was disclosed for a name in a global neighborhood environment in social networking. And, as a matter of law, that cannot be a secret. There's no objection to the request for judicial notice. It wouldn't be well taken. And there's no case that has ever held that information disclosed in a patent application, as this was on November -- September 20th, 2007, could still be a secret when the information was allegedly shared three years later by Mr. Sood.

So from -- this is a key element of the case. This ultimately is the nuts and bolts of the case. Because there is nothing else that is alleged to have been used here or turned over with any specificity.

Your Honor referred to three other possibilities, and I would address them. The first is the idea of neighborhood

level privacy controls. But this is at such a high level that we can't really understand what that would be. Certainly there are neighborhood level privacy controls disclosed in this patent.

And I will show you, just as one example -- actually, the document that I was handing around before, this is another two pages from the patent, your Honor, and it shows on Figure 9 of the patent, it's the second slide, a profile with private information available to neighbors only. If we are going to have a description and a claim here that there are neighborhood level privacy controls that are secret, we need an explanation of what those really are and how they were used.

THE COURT: That was going to be my point. With respect to determining, for instance, whether there's been disclosure that would negate a trade secret claim, I need to know more exactly about what the trade secret is, and here we are in the beginning stages, it seems like where that is required, I can't make that assessment until we get to the next stage where we actually have the compelled disclosure of exactly what it is, because this is just a description of a concept or a function. I have no idea: What is it? Is there a certain algorithm or a certain -- what's the secret?

MR. PULGRAM: That's exactly it, your Honor. Is there an algorithm? Tell us what the algorithm is. Because I can

tell you that my client did not use it. They completely independently developed this website. You cannot simply say we have trade secrets and an algorithm, we have trade secrets and a business model. Now, I can understand well the idea that they can have an opportunity to amend. But I think that what they need to amend here is to identify the specific trade secret, when and how they claim it was disclosed, and when and how they claim it was used. Because understand that when they give the laundry list of trade secrets, your Honor -- and they say, basically, in Mr. Abhyanker's business back in 2006, we worked on all of these areas, we worked on social networking, realtime updates, neighborhood-level privacy controls, e-mail lists of neighbors, details, algorithms, business plans -- we worked on all these things. But never do they identify one of those things specifically that was used other than the names and those few things that you mentioned before.

THE COURT: All right. Well, let me ask:

When is that -- you feel this is not the appropriate stage to --

MR. TARABICHI: Might be at the cleaning stage.

THE COURT: When's the appropriate process?

MR. TARABICHI: Well, obviously if we were in state court, we'd have to do the -- we'd have to serve the identification of trade secrets. And I assume they're going

to serve discovery asking us to divulge the details of the trade secrets. And I think really what's happening here is he's asking the Court to look beyond the pleadings and make factual determinations, almost: What would be appropriate on a summary judgment motion. So I think, you know, they need to serve discovery, and we will identify, you know, our identification of trade secrets, subject to an appropriate protective order. Attorney's eyes only. Get a chance to see when we provide them. And if they're unhappy with it or if they think they have a basis for a summary judgment motion because they think it's been publicly disclosed and is not a trade secret, they'll have that opportunity. That's not where we are right now in the pleading stage.

And, you know, with regard to the misappropriation, it's not just the name Nextdoor that we've alleged has been taken. So, for example, you know, in Mr. Abhyanker's business plans and execution plans, he had offices in neighborhoods in Menlo Park to do the initial testing. That's exactly where they went ahead and did their initial testing for their social network. So that's a pretty powerful fact. It's not just the name. There are other things. And we need additional discovery to find out and to get our hands around exactly what was and what wasn't taken overall. You know, that's all within their possession, exclusive possession. And there's enough there right now

that we should be able to move forward and have an opportunity to prove our case, obtain evidence, not just from counter-defendants but from third parties. And we'll see what the evidence turns up. But there's more than enough there right now to state a claim for misappropriation.

Now, this isn't a situation -- we're still dealing with, under Rule 8, Fraud Rule 9, say the date, time and place when different disclosures took place. But we do have allegations in our amended counterclaim regarding the disclosures, the use of the testing in the same neighborhood, an admission that happened during a meeting between Abhyanker and the CEO of Nextdoor, so, you know, we think we've done more than a sufficient job of alleging a claim for purposes of a motion to dismiss.

MR. PULGRAM: So the problem is, we're missing the three key elements here. And the *Diodes* case, and all of the Ninth Circuit cases that follow it, hold that the trade secret must be disclosed with sufficiency to separate it from matters of general knowledge in the trade, where -- special knowledge of those persons who are skilled in the trade. We have things like algorithms, business plans, software being described.

So, insofar as all of those items goes, we have nothing that can identify a trade secret.

THE COURT: So is there some reason why we don't adopt

the state court disclosure procedure?

MR. PULGRAM: That should be adopted, your Honor, and we'll argue it applies, but *Diodes* says there must be, first pleaded, that differentiation. They have a laundry list here of everything that was created for their website, and only one thing -- two things. One is the name and the other is the Lorelei location, which I'll address separately.

But as to everything else there needs to be an allegation of what algorithm, of what business plan, of what it is that is allegedly at issue, and when and how was it disclosed. The allegation that they have in terms of plausibility, we need to put it in context.

Mr. Sood, who's alleged to have potentially turned over information, was a contractor in 2006 for Mr. Abhyanker. He is alleged to have filled out a friends and family survey in 2010 about whether or not he was interested in this subject area, and on that basis they want to open the door to discovery to everything they ever did to try to create a website.

The allegation, the other allegation is that in 2007, Mr. Abhyanker revealed to Benchmark Capital some secrets which were then never used and never deployed in any way until 2010, supposedly, with no explanation for how those supposedly got into the hands of the plaintiff here, of the counter-defendants. Before you can start a lawsuit saying, I

had an idea in 2006 and I want to sue you about it, you have to identify the pieces of that work that were actually secret and that were disclosed and used. And to say, I had an algorithm and you must have an algorithm in there, that's a not an information and belief pleading. You can plead facts on information and belief.

THE COURT: Take algorithms, for instance. If you want them to disclose the precise, actual --

MR. PULGRAM: They need to at least describe what the purported algorithm is and what it does. If you don't necessarily give all the math and flow chart, you have to say it was an algorithm for this algorithm, an algorithm for that. You can't just say it was -- we had a business plan. Well, you have to explain exactly what it is. We had product details. What are they?

And by the way, this is a website that they had operating, the Fatdoor website operated -- it wasn't a secret. So they have to identify what secrets were used.

THE COURT: Well, they say algorithms, business plans, etc. I assume this is what it means, that -- makes sure only people in the neighborhood network, gives users a level of privacy that sites like Facebook don't. E-mail lists of neighbors around Cupertino....

It goes on to have some derivative as to what these algorithms are.

MR. PULGRAM: There's some level of additional detail, but all of it is thrown into this kitchen sink. I believe they need to identify, if they want to say an algorithm did this, break it out, say what that algorithm purportedly is. Actually differentiate it from all the other algorithms out there to separate by neighborhoods. But then describe how it was you have some basis to believe that Nextdoor.com got it. Because it didn't.

THE COURT: Why isn't that appropriate for interrogatory statements? You can ask those precise questions. It's almost like a claims patent case.

MR. PULGRAM: Because, your Honor, in the context of common sense and judicial experience, looking at this case, needs to conclude whether or not what they have said, at this point, rises to the level of plausibility. Have there been facts alleged here that support an inference of taking of this particular laundry list?

THE COURT: Well, there's facts of alleged opportunity. And --

MR. PULGRAM: They were friends, your Honor.

THE COURT: Well, but still, access to certain information, whether it was through Mr. Sood or Benchmark --

MR. PULGRAM: They were friends, your Honor. And I don't think that an allegation that someone is a friend is enough to put us there. There needs to be some basis to

claim that a friend, for one thing, had the code that they're talking about.

Let me talk about Lorelei for just one second, because I think that's a fair point.

THE COURT: Yep.

MR. PULGRAM: This is a specific fact they've alleged, and they said, My office is next to Lorelei, and that's where I planned to test my environment. To which my question is: What is the trade secret here? Lorelei is a neighborhood. It has people who are connected. It has -- it's a tight knit neighborhood. This is a publicly known fact. Mr. Abhyanker does not have a monopoly on testing in Lorelei. There is no formula, method, technique or process involved in testing in Lorelei. There is no trade secret here. This is a matter that is available to the public, and by the way, as your Honor knows, one of the elements of a trade secret claim is damages. What possible damages occurred from testing in Lorelei that Mr. Abhyanker has alleged?

THE COURT: That did strike me. I don't understand what the trade secret is.

MR. TARABICHI: Well, your Honor, that's like saying a customer list is not a trade secret because the people's names are known. Mr. Abhyanker specifically identified that neighborhood as particularly appropriate to test his networking concept. And just because the neighborhood is

known doesn't mean that it's -- that that identification was not a trade secret.

THE COURT: So it's like a customer list, is what you're saying.

MR. TARABICHI: Exactly.

MR. PULGRAM: But a customer list has individual customer's names. This is nothing other than what neighborhood qualities there are.

THE COURT: My point is that there were some work product and analysis that went into determining what belongs on that list. In this case, it's a list of one neighborhood, and I assume you found certain attributes or something that were of value in testing this product, and therefore -- and the fact that this was a neighborhood that was particularly amenable or valuable.

MR. PULGRAM: But there's no description of any work that went into this. It's the fact that it's the neighborhood that went across the street from Mr. Abhyanker's business.

THE COURT: The point you made earlier: Right now we are at the pleading stage, and I think the more productive route is to flesh this out and require that early on to say, what is exactly the test, and how you show that you meet that definition. And I think there'd have to be also some specificity: What is the route by which you allege that

particular trade secret, on a trade secret by trade secret basis, was misappropriated?

MR. PULGRAM: That's exactly what we think leave to amend would allow. If they have trade secrets that they actually can identify specifically, they need to do it and they need to say -- if they want to allege that Mr. Sood transmitted that information to us, let them do this and we'll come on Rule 911. But your Honor, there's no basis for it. And they can't -- here's the thing: When you look at the definitions of the trade secrets that they make, they said, This is work we did. And then, after that, all their allegations are Nextdoor.com was founded on these secrets, with no specification of which ones or how they got them. No specification of what was used.

If we come back and we have an allegation that says, This secret was communicated and obtained in this way, and used, then we'll have a subject for a lawsuit and we'll have a subject for discovery and we'll have a subject for Rule 11. If it's alleged in a way that is patently false --

MR. TARABICHI: Your Honor --

THE COURT: I'm determined to get there. The question is: What vehicle?

MR. TARABICHI: I want to say something. I have not seen a case that says you have to identify the disclosure element or misappropriation element, trade secret by trade

secret, within the identification. We have enough there where we have seen that they've taken some of the trade secrets. We're not going to have the information to allege, trade secret by trade secret, how it was disclosed. That's within their knowledge and possession. Anyone can get away with trade secret misappropriation if you require someone to say, At this date, at this time, you know, this guy disclosed this part of the trade secret to this guy. I mean, how are you going to do that, if people are, you know, sneaking about, disclosing trade secrets? You can't do it.

And I think we're past the --

THE COURT: You know what was used.

MR. TARABICHI: We know some of what was used.

THE COURT: And there is a --

MR. TARABICHI: There was a discussion between Mr. Abhyanker and the CEO of Nextdoor that confirmed the misappropriation. And, you know, this is more than just, you know, a couple of people being friends. You know, the CEO used to be an EIR at Benchmark. There was definitely an access along the way. Definite opportunity. And just the fact that they used the same neighborhood, something that was completely confidential within Mr. Abhyanker's trade secret business plans, that shows that they took his trade secrets. It's, you know, now we're talking about what -- the extent of what was taken. And I have not seen a case that makes us go,

you know, piece by piece through in the pleading stage and identify in the disclosure --

MR. PULGRAM: But -- two things. First of all, the conversation with Mr. Abhyanker and the CEO. There was absolutely no admission of taking anything. But the point is: That's not in their complaint either.

MR. TARABICHI: It is. It's in the amended counterclaim.

MR. PULGRAM: It's not in the amended counterclaim. There is no description of any such description in the amended counterclaim.

MR. TARABICHI: It's 147.

MR. PULGRAM: That's why if we're going to have some allegation that he acknowledged taking something, you better put it in the complaint.

MR. TARABICHI: 147, 26 to 21 --

THE COURT: You're demanding a level of specificity. This is the pleading stage.

MR. PULGRAM: It is, your Honor, but --

THE COURT: It is the pleading stage, and rather than going back and forth, as we often see in intellectual property cases where we've got six rounds of pleadings, it seems to me we ought to cut to the chase and require a disclosure, whether we adopt the CCP procedure or whatever it is that we do, and require that, early on -- and I think it's

fair to allow you -- once you've identified trade secrets -- which ones did you allege at this point, based on your knowledge, have been misappropriated, used, rather than a large laundry list kitchen sink approach, saying, among this, some of this was found, used this way.

I think it's fair to use the discovery process, whether it's contentioned interrogatories or otherwise, to make that disclosure early on. Because that may delimit the scope of discovery, because I'm not also going to allow free range discovery sort of just to find stuff on speculation.

MR. PULGRAM: Play this out, your Honor, if we may: If you leave this complaint, all they do is flow out the name because that's got to go. Okay? And you leave the complaint, and we have 17 to 25 items on a laundry list, and we say to them: Tell us which of these are used.

THE COURT: And what are they?

MR. PULGRAM: Exactly. Why don't we hear that right now? Your Honor --

THE COURT: Because it's a normal procedure. Why don't we adopt the procedure normally followed in state court?

MR. PULGRAM: It is the procedure normally followed in state court. In state court, you must identify the secret with sufficient specificity to differentiate it. You don't put out a business plan and get away with that.

MR. TARABICHI: Actually, you do. If you look at the cases I cited, they're all about the knowledge, business plans have been held sufficiently particular -- pricing information sufficiently particularly --

THE COURT: Sufficiently particular for pleading purposes.

MR. TARABICHI: Exactly. Which is what we're dealing with. That's what we're talking about today. Not talking about the identification later on.

THE COURT: I've already ruled. It's enough for pleading purposes today. And it's more useful at this point to talk about the next stage. And you can try to agree on a procedure, because you know what I want, because we're not going to let this go. I'm not going to give you open discovery at this point.

Before we do anything, I want an identification of the specifics of the alleged trade secrets. We can make an assessment whether or not, Number 1, they really are trade secrets. And, 2, your base of information to assert that they are misappropriated or used, so at least we know what the foundational basis is. Rather than using discovery to make your allegation, I want to know what your allegations are now. So you can do that by way of some kind of disclosure or following the CCP, or interrogatories, but I'd like for you to meet and confer, and, now, I'll order some

process, and that that be done early rather than going through rounds and rounds of pleading. I think the pleading requirements, at least under Rule 8, are sufficient at this point.

MR. PULGRAM: Your Honor, two things on this. One is: Can we also have a ruling that the allegation that the Nextdoor name for use in a neighborhood social network is not a secret as it was disclosed in the patent?

THE COURT: All right. That one, I don't see how -- unless you have another argument, I don't see how you can avoid that one.

MR. TARABICHI: Well, I think when you're granting the motion to dismiss, you grant it with regard to the entire claim. I don't know that you just strike out --

THE COURT: Well I have the power to strike -- whatever you call it. Strike. Motion to dismiss, grant, partial or not, on the merits. When you make your chart, I don't expect that one to be in there.

MR. TARABICHI: I guess you know the way -- my response to it is: The Nextdoor name was disclosed in the patent application with regard to, you know, the idea of the -- you know, not with regard to the idea of using that name for a private neighborhood social network, which is not really what this application is geared to. It's geared to more of a, you know, Wiki-type commenting platform. That

would be the distinction I would draw.

MR. PULGRAM: The patent speaks for itself. It says right there, "global neighborhood environment". It goes on to talk about all of these components of the associated network, but it also in the second handout specifically discussed privacy. And specifically discuss how persons can mark their information proprietary, they can have separate private and public sections.

THE COURT: It's close enough that there's been substantial disclosure, so --

MR. PULGRAM: Absolutely.

THE COURT: So I, you know, however you want to treat this, as a sua sponte motion to strike or a motion to grant the dismissal in part, whatever it is, that's out.

MR. PULGRAM: Thank you, your Honor.

THE COURT: Okay.

MR. WALIA: Your Honor, I'm sorry. I stood by here just for the -- representing counter-defendants Monsoon and Sood. I don't want to belabor the point -- I know we've gone back and forth on this -- but I think the idea of pleading with specificity applies to my clients specifically because the only allegation in this myriad of trade secrets claims that they've presented, the only concrete one that they've presented was a disclosure -- alleged disclosure of the name "Nextdoor". As your Honor has determined, that was publicly

disclosed prior in the patent application. So for my client, specifically, it's a matter of what they disclosed. And they have not alleged anything other than this name.

So to say that it can be done at a later stage prejudices my clients. Because the only allegation that we can understand is, we -- they allegedly disclosed this Nextdoor name. So without requiring them to plead with greater specificity, my client is stuck now.

THE COURT: Now, which one is first. You've got to know what it is that's being disclosed, what is the subject of disclosure.

MR. WALIA: But they haven't alleged what my client's disclosed, your Honor. So I would think, as a person who's required to defend an action, we would at the very least be notified of what we are alleged to have done wrong. And the only thing I think that's been alleged here is a disclosure of the Nextdoor name. And we've now made that, you know, a non trade secret issue.

So I think it requires a level of pleading that they have not met, at least adds to Monsoon and Sood.

MR. TARABICHI: I'd like to respond to that, your Honor. First of all, that's not true. I can point you to paragraphs in the amended counterclaim where we're saying they disclosed the trade secrets. We never limited it to the name. So he's mischaracterizing that. No such limitation.

MR. WALIA: Again, that's what I'm saying. They're saying "disclosed trade secrets". Again: What trade secrets? This is not a use. This is a disclosure. So what did we have access to and what did we disclose? There's nothing in the pleadings that allege that.

THE COURT: I thought I addressed that. That we're going to require -- you're going to meet and confer, talk about a process by which the trade secrets will be identified with specificity. And then, through interrogatories or some other process, you'd also do it -- like some kind of chart. I want to know what it is that was disclosed and what the allegations are that support that assertion of use, disclosure, misappropriation, so forth.

MR. PULGRAM: Could we request that that be filed with the Court so we'll have Rule 11 implications?

THE COURT: Yes.

MR. TARABICHI: That's not the procedure that's followed in state court.

THE COURT: Well --

MR. TARABICHI: It would have to be filed under seal.

THE COURT: Yeah, you can file it under seal.

MR. PULGRAM: Sure. Absolutely.

THE COURT: Yes. So I'd like to you meet and confer and let me know in -- let's say in two weeks if you can come up with a framework for this. Otherwise, I'll specify

something.

MR. PULGRAM: So the one other point on this, your Honor, is the overarching point about the fact that this plaintiff previously alleged that he didn't own these works. And we're heading down the path here based on an allegation that there's 180 degrees different from the prior allegation that Fatdoor unleashed works. Now, this is not an inconsequential matter at all, and there is an allegation, and I think if we try to track the explanation on their side, they say, Well, not all of what was involved -- not all of what I did was part of Fat Door. Some of it was in LegalForce; some of it was in this other entity.

And there's a specific paragraph of the complaint that addressed that. It's Paragraph 111. And they state that during the development of the source code for LegalForce venture -- which was the law area, the patent exchange, the inventor network, that during the development of the source code there, there was the decision made to apply the same source code of LegalForce to create a private social network called Nextdoor. They decided to parallel the source code.

Other than that, there's no explanation of how what was always alleged to be Fatdoor's work somehow is LegalForce's work. There's allegation that they paralleled the source code. And yet we have allegations that we're now about to get into -- and factual discovery about -- involving

everything but source code.

There's no allegation that LegalForce's source code, which is what Mr. Abhyanker claims he now owns, was ever used by Nextdoor. And yet that's the only thing that's been identified here as not being part of the Fatdoor business that was pitched to Benchmark and that was disclosed, where the trade secrets were purportedly disclosed to Benchmark. But if -- the law is clear that if one is going to turn a 180 and claim that one now owns what briefly a different corporation, Google -- the allegation, remember, was in a state court complaint that the entire basis for Nextdoor.com's business rests on stolen misappropriated materials owned by Google which bought Fatdoor. If we're going to do a 180 from that now to start a new lawsuit, there needs to be some explanation of what it was that was carved out from LegalForce. Not simply an assertion. That -- everything that we ever worked on is now moved from the Fatdoor/Nextdoor description to a new label, the LegalForce/Nextdoor description.

So, there is no allegation here that the source code was ever swapped. There's no allegation that anything that has been explicably linked to LegalForce was ever disclosed.

And to allow a claim to go forward on that sort of basis, your Honor, I think really frustrates justice.

MR. TARABICHI: Your Honor, if I may respond?

THE COURT: What about that? Yeah.

MR. TARABICHI: First, I want to start from the premise that we've specifically pled, that we've owned these trade secrets. And it's not just a bare allegation. We've gone through and we've provided the Court with an explanation of the LegalForce and Nextdoor technology. And the Fatdoor technology which went to Fatdoor and went to Google. We have -- we've identified well-respected and well-known individuals who are investors in LegalForce, Mr. Warren Meyer and Jeffrey Trayson, who can also support the claim to ownership of that separate technology.

And, you know, he's picking and choosing the language from the state court complaint, because in the state court complaint we have language like, "some of which was owned by Google". Which implies some of it was not owned by Google, and, you know, we cited a case on point, the *Farhang* case, where you had basically the same exact situation with same allegations. The Court said, We think there might be some inconsistent allegations here, it might be troublesome, but it's not sufficient to grant the motion to dismiss, based on lack of ownership at the pleading stage.

Same thing here. So we've -- I know they may not like our allegations regarding ownership, but we're alleging that we own the trade secrets; we've explained why we own them and what they are. And -- it's the items in Paragraph 109.

That's what we're saying he owns: The trade secrets that form the basis for the claim. It's pretty simple and straightforward.

MR. PULGRAM: But that's exactly what was alleged in the prior complaint to be owned by Fatdoor. The Farhang case, which was Judge Ron Whyte's case, held that it was concerned that there were allegations that certain rights were first owned by another company, but then owned by a second company. And Judge Whyte said, But you know what? The first allegation would state a claim. So this contradiction doesn't need to be explained because the first allegation was sufficient. Therefore, I'm going to move on to the other issues in the case.

That's the opposite of what's true here. Because the first allegation here, which is that Fatdoor owned this and Fatdoor was bought by Google, pleads them out of court. And that is exactly what they said in the first amended complaints, Paragraph 169: Google now owns the rights to the original technology of the Nextdoor/Fatdoor concept.

And when one reads the complaint in that action and the complaint here, the technology being talked about is exactly the same. The only exception that I've found is this idea that LegalForce had source code that was also going to be used for this Nextdoor website. There's no allegation here that that source code was transferred, was

used. So there has to be some explanation before we go forward. And I think if they're going to do that in -- and amend a complaint, if they have some way to try to explain why it is that the same things alleged to be owned by Google now in the prior case are owned by them in this case, let's hear it. But it's not appropriate --

MR. TARABICHI: Your Honor --

MR. PULGRAM: -- to simply say --

THE COURT: I find that's going to be a matter for summary judgment or another proceeding. There are contradictions that may have to be explained at some point. But as far as pleadings go, I am not going to, at this point, rule on the basis of a motion to dismiss and make that finding preclude the assertion.

Last thing I want to address. I'll tell you, I'm going to deny the motion to disqualify plaintiff's counsel. I don't find that there was a substantial enough overlap here or an indication or any proof that any confidential information was obtained by virtue of the prior representation.

So, I'm going to proceed and talk about where we go from here.

MR. MONTGOMERY: Your Honor, if I could just make one brief comment?

THE COURT: Yep.

MR. MONTGOMERY: Necessarily, our understanding of the facts is evolving as we move forward with discovery. And we now know that Mr. Abhyanker had not retained his copy of the engagement letter that was signed by Fenwick. We've now gotten it. It's Document 81 in Pacer. We note that this was signed in -- July 27th, 2006.

But from looking at -- and from looking at it, we see that they talk about forming the -- the 102, 103 corporation which was later renamed LegalForce, Incorporated. Looking at the Secretary of State website from Delaware shows that that corporation was actually incorporated in May 2006.

Also, we have the declaration of Mr. Abhyanker that there'd been a substantial amount of conversation, advice and counsel back and forth with a Fenwick partner named Rajiv Patel, where clearly this was in early 2006. And I think that makes the case that there was an attorney/client relationship established between Mr. Abhyanker personally and Fenwick long pre-dating the -- this engagement letter, which I suspect is really an attempt to paper the file.

But that being the case, I just would like to say that, given the fact that so much confidential material would have gone back and forth between Mr. Abhyanker, a patent attorney, and Mr. Patel, a patent attorney, I think it's very apparent on the face that Fenwick would have obtained confidential information relating to the intellectual

property that later became Nextdoor. And, given that, I just would like to ask for reconsideration. If Fenwick genuinely did obtain that confidential information from representing Mr. Abhyanker personally, it does seem to be unfair to now have, where Mr. Abhyanker is being Sood by Nextdoor, to have Fenwick represent the other side in a case that will involve the same intellectual property and many of the -- many other related items as well.

THE COURT: What indication is there that -- and the conduit you're concerned with is Mr. Patel, right?

MR. MONTGOMERY: In the motion to disqualify counsel, yes, Sir.

THE COURT: What -- what information -- what evidence is there of confidential information relevant to this matter having been exchanged?

MR. MONTGOMERY: I think that's a good point, your Honor. What we have is a declaration from Mr. Abhyanker stating that there was a very close personal relationship, close family relationship. Tellingly, though, what we don't have, and I think would be the obvious thing, would be for Mr. Patel simply to produce a declaration stating that he had never received any confidential information or that he had never provided any advice and counsel on any of the information that is involved in the current case.

Tellingly, I don't think we have that. I think that

probably speaks well for Fenwick. But the truth is if Mr. Patel would simply have come forward and said, I never talked about that sort of thing, I think that would -- at least there'd be balancing declarations on either side. Right now, we only have Mr. Abhyanker's declaration.

MR. PULGRAM: The declaration by Mr. Abhyanker, the sum total of what he says about suggestions of IP strategy, at Page 1, says, "After Fenwick partner Patel helped me with intellectual property strategy, Fenwick sent me a new engagement letter to sign on July 27, 2006."

That's the sum total of the description. There's nothing suggesting anything to do with Nextdoor.com, anything to do with in any way with the matters in this case. Mr. Patel has been walled off from this case for 18 months, as agreed by the parties at that time. He's not submitted a declaration because we don't talk to him about this. And that's appropriate, because we don't want to know anything that he knew from his friendship with Mr. Abhyanker. But the very fact that an engagement letter was executed demonstrates that conversations among friends is different.

And there is nothing here to suggest an attorney/client relationship was formed that could be a basis for disqualifying an entire law firm because Mr. Abhyanker and Mr. Patel were friends.

THE COURT: And there's nothing really I've seen that

specifically suggests that information that was so sensitive or prejudicial was conveyed. And -- maybe it was; maybe it wasn't. But I don't see anything here. I note that there's no billing records that would demonstrate that, circumstantially.

MR. MONTGOMERY: If I could point to -- the Fenwick website specifically says that for startups and venture-backed companies, they provide assistance and counsel without charging. And I think Mr. Patel's relationship with Mr. Abhyanker probably fell into that category.

MR. PULGRAM: We're getting pretty far outside the record, and that's a lot different situation than a friendship.

THE COURT: I understand what you're saying. But my ruling stands. I think -- the fact that there's been a wall that's been erected as a matter of additional caution I think is appropriate, and it should be maintained throughout this case, and I assume it will be.

MR. PULGRAM: It will be, your Honor.

THE COURT: And so, given the record and given that assurance, I find there's not a basis for disqualifying counsel at this point.

MR. MONTGOMERY: I understand, your Honor.

THE COURT: All right.

So, do we have a discovery conference?

DEPUTY CLERK: It's today.

THE COURT: I think the thing most useful to address is, I'd like a meet and confer and talk about a process, so -- for disclosure, and as a predicate to any other discovery. And I'd like to come back in and meet soon after we've had that, see whether we can talk about whether the next step is a motion, next step is some limited discovery, or what we're going to do in that regard.

So, I'd like for you to meet and confer and figure out something that's going to happen to us in the next 30 to 60 days and then come back here.

MR. PULGRAM: Certainly. There's a defendant that hasn't been served the last two months since the amended counterclaim or counter defendant. Benchmark's not here.

MR. TARABICHI: Right. So with regard to Benchmark, after we filed the amended counterclaim, we had to wait for the new summons to be issued. And at that point, we were coming up on this hearing.

I've had conversations with their counsel. And now that motion to dismiss has been denied, counsel for the other Benchmark entities -- used to be, you know, served, now there's no number attached to the Benchmark entities, he's going to accept service on behalf of Benchmark this week.

THE COURT: All right. So they should be brought into this process.

MR. TARABICHI: They will be.

THE COURT: Is 60 days enough time figure out what, exactly, the plan is, and then come back?

MR. PULGRAM: Sure. I think we will bring them in the process -- I expect they'll file their motion to dismiss this claim too. The -- so I think we should -- I mean, it could be useful to get on your calendar for a CMC in all events. I'm thinking of my own summer. You guys probably have different plans over the summer. I'm out for a two-week block end of July, beginning of August, but back the second week of August. We could set something then as a CMC. And --

THE COURT: Let's set an August date then, Betty.

DEPUTY CLERK: August 22nd, at 10:30.

THE COURT: I would like a report, let's say within the next three weeks about a plan, a plan of disclosure.

MR. PULGRAM: We'll submit a joint report, your Honor.

THE COURT: Okay. And I forget, has there been any ADR discussion?

MR. PULGRAM: There has been a very concerted reckoning on our side that any mediation at this time would be completely unproductive.

MR. TARABICHI: We did have a phone conference with the ADR unit, and I think they scheduled a follow-up phone call, sometime I think mid to late June. The date --

MR. WALIA: We wanted to allow Benchmark to come in as a party to be privy to those discussions.

THE COURT: So maybe we'll talk about that on the 22nd as well.

MR. PULGRAM: Yes.

THE COURT: Okay. Thank you.

MR. PULGRAM: Thank you for your time, your Honor.

THE COURT: Certainly.

MR. TARABICHI: Thank you.

(Adjourned)

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CERTIFICATE OF REPORTER

I, Connie Kuhl, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into written form.

Connie Kuhl

Connie Kuhl, RMR, CRR
Thursday, June 13, 2013